

AMENDED IN SENATE APRIL 21, 2003

AMENDED IN SENATE MARCH 25, 2003

SENATE BILL

No. 163

Introduced by Senator Alarcon

February 11, 2003

An act to add Sections 31000.10 and 37103.1 to the Government Code, relating to personal services contracting.

LEGISLATIVE COUNSEL'S DIGEST

SB 163, as amended, Alarcon. Service contracts: counties and cities.

Existing law requires public entities to comply with certain procedures in soliciting and awarding public contracts. Existing law also authorizes public entities, under limited circumstances, to enter into a contract for the provision of services.

This bill would authorize a county, ~~city~~, or city ~~and county~~, other than a chartered county, ~~city~~, or city ~~and county~~, to enter into a contract for services with a private entity, if the contract would achieve cost savings and if any of the following conditions are satisfied: (1) the contract would be for new functions that the Legislature mandates or authorizes be performed by independent contractors, (2) the services would not be available within the county, ~~city~~, or ~~county~~ ~~and~~ city or cannot be satisfactorily performed by district employees, (3) the services would be incidental to a purchase or lease contract, (4) the policy, administrative, or legal goals and purposes of the county, ~~city~~, or city ~~and county~~ could not be accomplished through the regular or ordinary hiring process, (5) the work would meet criteria for emergency appointment, (6) equipment, materials, facilities, or support services

would be provided that could not feasibly be provided by the district, and (7) the services would be of an urgent, temporary, or occasional nature.

The bill would operate prospectively and would not apply to any existing contracts for services.

This bill would not apply to specified contracts for public transit, architectural, engineering, land surveying, and construction projects services.

This bill would, in the event a contract for transit services is not renewed because of the enactment of this section and if the county or city performs those transit services, require the county or city to offer employment, on a preferential basis as specified, to those former employee of the former contractor that performed those transit services. This bill would also require those former employees of the prior transit contractor that were represented by an exclusive bargaining representative, to be placed in an appropriate local bargaining unit. If there is not an appropriate local bargaining unit, this bill would require the county or city, as applicable, to continue bargaining with the exclusive bargaining representative of the former employees of the prior transit contractor hired by the county or city.

This bill would require a county, city, or city and county to adopt new practices with respect to contracting for services, and thereby would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. Section 31000.10 is added to the Government Code, to read:

31000.10. (a) Notwithstanding any other provision of this division, contracting for all services currently or customarily performed by county employees to achieve cost savings is permissible, unless otherwise prohibited, when all the following conditions are met:

(1) The county board of supervisors or the county clearly demonstrates that the proposed contract will result in actual overall cost savings to that county, provided that:

(A) In comparing costs, there shall be included the county's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there may not be included the county's indirect overhead costs, unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the county. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing county costs that would be directly associated with the contracted function. These continuing county costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work may not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not undercut county pay rates.

(3) The contract does not cause the displacement of county employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within

1 the same classification and general location or employment with
2 the contractor, so long as wages and benefits are comparable to
3 those paid by the county.

4 (4) The savings shall be large enough to ensure that they will
5 not be eliminated by private sector and county cost fluctuations
6 that could normally be expected during the contracting period.

7 (5) The amount of savings clearly justifies the size and duration
8 of the contracting agreement.

9 (6) The contract is awarded through a publicized, competitive
10 ~~bidding~~ *procurement* process.

11 (7) The contract includes specific provisions pertaining to the
12 qualifications of the staff that will perform the work under the
13 contract, as well as assurances that the contractor's hiring practices
14 meet applicable nondiscrimination standards.

15 (8) The potential for future economic risk to the county from
16 potential contractor rate increases is minimal.

17 (9) The contract is with a firm. A "firm" means a private entity
18 that is a corporation, limited liability corporation, partnership,
19 nonprofit organization, or sole proprietorship.

20 (10) The potential economic advantage of contracting is not
21 outweighed by the public's interest in having a particular function
22 performed directly by the county.

23 (b) Notwithstanding any other provision of this chapter,
24 contracting for services shall also be permissible when any of the
25 following conditions can be met:

26 (1) The contract is for new county functions and the Legislature
27 has specifically mandated or authorized the performance of the
28 work by independent contractors.

29 (2) The services are not available within the ~~county~~, *county*
30 *workforce*, cannot be performed satisfactorily by county
31 employees, or are of such a highly specialized or technical nature
32 that the necessary expert knowledge, experience, and ability are
33 not available through the ~~county~~, *county workforce*.

34 (3) The services are incidental to a contract for the purchase or
35 lease of real or personal property. Contracts under this criterion,
36 known as "service agreements," shall include, but not be limited
37 to, agreements to service or maintain office equipment or
38 computers that are leased or rented.

39 (4) The policy, administrative, or legal goals and purposes of
40 the county cannot be accomplished through the utilization of

persons selected pursuant to the regular or ordinary county hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(5) The nature of the work is such that the criteria for emergency appointments apply. “Emergency appointment” means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the county. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.

(6) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the county in the location where the services are to be performed.

(7) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the county’s regular or ordinary hiring process would frustrate their very purpose.

(c) (1) Except as provided in paragraph (2), this section shall apply to all counties, including counties that have adopted a merit or civil service system.

(2) This section does not apply to a charter county formed pursuant to Section 3 of Article XI of the California Constitution.

(d) (1) *This section does not apply to any contract for services described in Section 4525 or Section 4529.10.*

(2) *This section does not apply to a contract for public transit services, including paratransit services, in which the county is the grantee or subgrantee of Federal Transit Administration assistance and the county is thereby subject to the guidelines established in FTA Circular 4220 1D or any subsequent guidelines or revisions issued by the Federal Transit Administration.*

(e) *Notwithstanding any other provision of law, if any contract for transit services is not renewed because of the standards set*

1 *forth in this section, and if the county commences to perform*
2 *transit services that were provided by the former contractor, all of*
3 *the following apply:*

4 *(1) The county shall offer employment, on a preferential basis,*
5 *to any qualified former employee of the former contractor to*
6 *perform the same job functions as performed on behalf of the*
7 *former contractor.*

8 *(2) If, at any time, the county determines that fewer employees*
9 *are required to perform the transit services than the number of*
10 *employees that were required to perform those services under the*
11 *former contract, the county shall offer preferential employment to*
12 *the employees of the former contractor based on seniority.*

13 *(3) (A) If the employees of the former contractor were*
14 *represented by an exclusive bargaining representative and if*
15 *transit services, or services similar to the transit services*
16 *performed by the former contractor, are also performed by*
17 *employees of the county, the employees of the former contractor*
18 *shall be placed in the appropriate county bargaining unit.*

19 *(B) In the event there is not an appropriate county bargaining*
20 *unit for the employees of the former contractor, the county shall*
21 *recognize and bargain with the exclusive representative of the*
22 *employees of the former contractor.*

23 *(f) This section shall apply to contracts for services entered into*
24 *after January 1, 2004. This section does not apply to the renewal*
25 *of contracts for services subsequent to January 1, 2004, where the*
26 *contract was entered into before January 1, 2004, irrespective of*
27 *whether the contract is ~~renewed~~ renewed, modified, or rebid with*
28 *the existing contractor or with a new contractor.*

29 SEC. 2. Section 37103.1 is added to the Government Code, to
30 read:

31 37103.1. (a) Notwithstanding any other provision of this
32 chapter, contracting for all services currently or customarily
33 performed by city employees to achieve cost savings is
34 permissible, unless otherwise prohibited, when all the following
35 conditions are met:

36 (1) The legislative body clearly demonstrates that the proposed
37 contract will result in actual overall cost savings to that city,
38 provided that:

39 (A) In comparing costs, there shall be included the city's
40 additional cost of providing the same service as proposed by a

1 contractor. These additional costs shall include the salaries and
2 benefits of additional staff that would be needed and the cost of
3 additional space, equipment, and materials needed to perform the
4 function.

5 (B) In comparing costs, there may not be included the city's
6 indirect overhead costs unless these costs can be attributed solely
7 to the function in question and would not exist if that function was
8 not performed by the city. Indirect overhead costs shall mean the
9 pro rata share of existing administrative salaries and benefits, rent,
10 equipment costs, utilities, and materials.

11 (C) In comparing costs, there shall be included in the cost of a
12 contractor providing a service any continuing city costs that would
13 be directly associated with the contracted function. These
14 continuing city costs shall include, but not be limited to, those for
15 inspection, supervision, and monitoring.

16 (2) Proposals to contract out work may not be approved solely
17 on the basis that savings will result from lower contractor pay rates
18 or benefits. Proposals to contract out work shall be eligible for
19 approval if the contractor's wages are at the industry's level and
20 do not undercut city pay rates.

21 (3) The contract does not cause the displacement of city
22 employees. The term "displacement" includes layoff, demotion,
23 involuntary transfer to a new classification, involuntary transfer to
24 a new location requiring a change of residence, and time base
25 reductions. Displacement does not include changes in shifts or
26 days off, nor does it include reassignment to other positions within
27 the same classification and general location or employment with
28 the contractor, so long as wages and benefits are comparable to
29 those paid by the city.

30 (4) The savings shall be large enough to ensure that they will
31 not be eliminated by private sector and city cost fluctuations that
32 could normally be expected during the contracting period.

33 (5) The amount of savings clearly justifies the size and duration
34 of the contracting agreement.

35 (6) The contract is awarded through a publicized, competitive
36 ~~bidding~~ *procurement* process.

37 (7) The contract includes specific provisions pertaining to the
38 qualifications of the staff that will perform the work under the
39 contract, as well as assurances that the contractor's hiring practices
40 meet applicable nondiscrimination standards.

(8) The potential for future economic risk to the city from potential contractor rate increases is minimal.

(9) The contract is with a firm. A “firm” means a private entity that is a corporation, limited liability corporation, partnership, nonprofit organization, or sole proprietorship.

(10) The potential economic advantage of contracting is not outweighed by the public’s interest in having a particular function performed directly by the city.

(b) Notwithstanding any other provision of this chapter, contracting for services shall also be permissible when any of the following conditions can be met:

(1) The contract is for new city functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

(2) The services are not available within the ~~city~~, *city workforce*, cannot be performed satisfactorily by city employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the ~~city~~, *city workforce*.

(3) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as “service agreements,” shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

(4) The policy, administrative, or legal goals and purposes of the city cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary city hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(5) The nature of the work is such that the criteria for emergency appointments apply. “Emergency appointment” means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the city. The frequency of appointment, length of employment, and the

1 circumstances appropriate for the appointment of firms or
2 individuals under emergency appointments shall be restricted so
3 as to prevent the use of emergency appointments to circumvent the
4 regular or ordinary hiring process.

5 (6) The contractor will provide equipment, materials, facilities,
6 or support services that could not feasibly be provided by the city
7 in the location where the services are to be performed.

8 (7) The services are of such an urgent, temporary, or occasional
9 nature that the delay incumbent in their implementation under the
10 city's regular or ordinary hiring process would frustrate their very
11 purpose.

12 (c) (1) Except as provided in paragraph (2), this section shall
13 apply to all cities, including cities that have adopted a merit or civil
14 service system.

15 (2) This section does not apply to a charter city formed pursuant
16 to Section 3 of Article XI of the California Constitution.

17 (d) (1) *This section does not apply to any contract for services*
18 *described in Section 4525 or Section 4529.10.*

19 (2) *This section does not apply to a contract for public transit*
20 *services, including paratransit services, in which the city is the*
21 *grantee or subgrantee of Federal Transit Administration*
22 *assistance and the city is thereby subject to the guidelines*
23 *established in FTA Circular 4220 1D or any subsequent guidelines*
24 *or revisions issued by the Federal Transit Administration.*

25 (e) *Notwithstanding any other provision of law, if any contract*
26 *for transit services is not renewed because of the standards set*
27 *forth in this section, and if the city commences to perform transit*
28 *services that were provided by the former contractor, all of the*
29 *following apply:*

30 (1) *The city shall offer employment, on a preferential basis, to*
31 *any qualified former employee of the former contractor to perform*
32 *the same job functions as performed on behalf of the former*
33 *contractor.*

34 (2) *If, at any time, the city determines that fewer employees are*
35 *required to perform the transit services than the number of*
36 *employees that were required to perform those services under the*
37 *former contract, the city shall offer preferential employment to the*
38 *employees of the former contractor based on seniority.*

39 (3) (A) *If the employees of the former contractor were*
40 *represented by an exclusive bargaining representative and if*

1 *transit services, or services similar to the transit services*
2 *performed by the former contractor, are also performed by*
3 *employees of the city, the employees of the former contractor shall*
4 *be placed in the appropriate city bargaining unit.*

5 *(B) In the event there is not an appropriate city bargaining unit*
6 *for the employees of the former contractor, the city shall recognize*
7 *and bargain with the exclusive representative of the employees of*
8 *the former contractor.*

9 *(f) This section shall apply to contracts for services entered into*
10 *after January 1, 2004. This section does not apply to the renewal*
11 *of contracts for services subsequent to January 1, 2004, where the*
12 *contract was entered into before January 1, 2004, irrespective of*
13 *whether the contract is ~~renewed~~ renewed, modified, or rebid with*
14 *the existing contractor or with a new contractor.*

15 SEC. 3. Notwithstanding Section 17610 of the Government
16 Code, if the Commission on State Mandates determines that this
17 act contains costs mandated by the state, reimbursement to local
18 agencies and school districts for those costs shall be made pursuant
19 to Part 7 (commencing with Section 17500) of Division 4 of Title
20 2 of the Government Code. If the statewide cost of the claim for
21 reimbursement does not exceed one million dollars (\$1,000,000),
22 reimbursement shall be made from the State Mandates Claims
23 Fund.

